

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CRYSTA L. SNOW)	
Claimant)	
VS.)	
)	
USD 261)	Docket No. 253,300
Respondent)	
AND)	
)	
KANSAS ASSOCIATION OF SCHOOL BOARDS)	
SELF-INSURED FUND)	
Insurance Fund)	

ORDER

Respondent and its insurance fund (respondent) appealed the July 12, 2005, Post Award Medical Order entered by Administrative Law Judge John D. Clark. The Board placed this matter on its summary docket for disposition without oral argument.

ISSUES

This claim arises from a September 1996 accident that injured claimant's left knee. The parties settled the claim in May 2000, with claimant reserving the right to seek additional medical benefits. And in June 2001, Judge Clark designated Dr. Bradley W. Bruner as claimant's authorized treating physician.

In December 2004, however, respondent filed a request to terminate Dr. Bruner's authority as the treating physician. After a February 10, 2005, hearing before Administrative Law Judge Thomas Klein, the Judge entered an order dated February 11, 2005, which denied respondent's request.¹ Respondent appealed that order to this Board, which in its order dated June 30, 2005, affirmed Judge Klein's decision.

Respondent's request to terminate Dr. Bruner's services now returns to the Board for a second time.² At the latest hearing, which was held before Judge Clark on July 12, 2005, respondent presented, among numerous other medical records, a February 28,

¹ Judge Klein substituted for Judge Clark at the February 10, 2005, hearing.

² P.H. Trans. (July 12, 2005) at 3.

2005, report from the Kansas Foundation for Medical Care to Dr. Terry Tracy, the medical administrator in the Division of Workers Compensation.

At the July 12, 2005, hearing, claimant requested the Judge to continue claimant's medical treatment with Dr. Bruner and her temporary total disability benefits until August 11, 2005, which is the date the doctor indicated claimant could return to work following a May 25, 2005, surgical procedure. Claimant also requested post-award attorney fees. In support of those requests, claimant introduced a return to work slip from Dr. Bruner dated May 25, 2005; a June 21, 2005, letter from Dr. Bruner to claimant's attorney; and an itemized list of the legal services claimant's attorney rendered in this claim from February 14, 2005, through July 11, 2005.

On July 12, 2005, Judge Clark issued the Post Award Medical Order in which the Judge ordered (1) the payment of temporary total disability benefits to continue until August 11, 2005; (2) Dr. Bruner was authorized to provide claimant with conservative treatment only until August 11, 2005; (3) the payment of claimant's medical bills; and (4) the payment of claimant's attorney fees in the sum of \$1,425.

Respondent contends Judge Clark erred. First, respondent argues the Judge should have granted its request to terminate Dr. Bruner's services. Second, respondent contends claimant should not receive temporary total disability benefits as "it is only the unnecessary and inappropriate medical treatment by Dr. Bruner that would require her to be off work" and, besides, "[c]laimant is a teacher who is not required to work in the summer" and, therefore, "[s]he is not medically restricted from teaching since she doesn't teach in the summer anyway."³ And third, respondent argues the Judge should have relieved respondent from paying the medical expense associated with Dr. Bruner's treatment. Accordingly, respondent requests the Board to reverse the July 12, 2005, Post Award Medical Order.

Conversely, claimant requests the Board to affirm the Post Award Medical Order and to award her additional attorney fees in the sum of \$1,140 for the services rendered from July 13, 2005, through August 18, 2005.

The parties have presented the following issues for Board review:

1. Did the Judge err by authorizing Dr. Bruner to provide claimant with conservative medical treatment only until August 11, 2005?
2. Did the Judge err by finding claimant should continue to receive temporary total disability benefits until August 11, 2005?

³ Respondent's Brief at 11 (filed Aug. 5, 2005).

3. Did the Judge err by failing to absolve respondent from paying claimant's medical bills?
4. Is claimant entitled to additional attorney fees for the legal services rendered by her attorney from July 13, 2005, through August 18, 2005?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the July 12, 2005, Post Award Medical Order should be affirmed.

Respondent initiated its request to terminate Dr. Bruner's medical services due to an unusually high number of surgical procedures the doctor performed on claimant's left knee. Dr. Bruner most recently operated on claimant's left knee on May 25, 2005. In the July 12, 2005, Order, Judge Clark limited Dr. Bruner's authority to provide only conservative treatment and only until August 11, 2005.

It is reasonable for a physician to monitor a patient who has undergone recent surgery. Likewise, it is reasonable to allow the physician who performed that surgery to provide those follow-up visits. Accordingly, the Judge did not err by authorizing Dr. Bruner to provide conservative treatment to claimant until August 11, 2005.

Respondent also challenges the Judge's order that claimant's temporary total disability benefits should continue until August 11, 2005. At the July 12, 2005, hearing, claimant introduced claimant's exhibit 1, which is a document signed by Dr. Bruner indicating claimant should perform no work from May 25, 2005, to August 11, 2005. Respondent argues that claimant should not receive temporary total disability benefits because she is a teacher and, therefore, she is not expected to work in the summer. The Board finds that argument is without merit.

Next, respondent argues claimant should not receive temporary total disability benefits as the only reason claimant is unable to work is due to Dr. Bruner's allegedly inappropriate medical treatment. That argument is likewise without merit as an injured worker is entitled to receive workers compensation benefits for the aggravation of a work-related injury due to the medical treatment rendered. Under the Workers Compensation Act, securing medical treatment arises out of and in the course of claimant's employment with respondent and injuries occurring during ongoing medical treatment for work-related injuries are compensable.⁴

⁴ See e.g., *Taylor v. Centex Construction Co.*, 191 Kan. 130, 379 P.2d 217 (1963); *Roberts v. Krupka*, 246 Kan. 433, 790 P.2d 422 (1990); *Helms v. Tollie Freightways, Inc.*, 20 Kan. App. 2d 548, 889 P.2d 1151 (1995); *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, 995 P.2d 855 (2000); and *Zimmer v. Central Kansas Medical Center*, No. 186,009, 1997 WL 229454 (Kan. WCAB Apr. 30, 1997).

Respondent contends the Judge should have absolved it of the responsibility to pay the outstanding medical expense claimant incurred with Dr. Bruner. The Workers Compensation Act provides a specific procedure in K.S.A. 44-510j for employers and their insurance carriers to dispute the payment of medical bills on the basis that the services were unjustified or the charges excessive. That statute, in general, provides for informal hearings, utilization review reports, peer reviews, formal hearings, and appellate review. Consequently, respondent should pursue its challenge to Dr. Bruner's medical bills under K.S.A. 44-510j.

Claimant's request for additional attorney fees has not been considered by the Judge. Accordingly, respondent has not been given an opportunity to present any objections or evidence it may have concerning that request. The request for additional attorney fees is denied at this time as it should first be presented to the Administrative Law Judge with proper notice to respondent.

WHEREFORE, the Board affirms the July 12, 2005, Post Award Medical Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of October, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Fund
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director